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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,809	10/30/2000	Jeff L. DeJong	119941-1083	3391
7590 11/05/2003			EXAMINER HUTSON, RICHARD G	
Daniel F Perez Esq Gardere & Wynne LLP 3000 Thanksgiving Tower 1601 Elm Street Dallas, TX 75201-4761			ART UNIT 1652	
DATE MAILED: 11/05/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/703,809

Applicant(s)

DEJONG, JEFF L.

Examiner

Richard G Hutson

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 86-107.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Richard G Hutson, Ph.D.
Primary Examiner
Art Unit: 1652

Continuation of 2. NOTE: Applicants proposed amendment of claim 86 introduces a new 112 second paragraph issue as claims 87-88, improperly broaden the scope of the genus of claimed proteins of the claim from which they depend, claim 86. Further applicants proposed amendment of claim 86 would result in claims 89 and 86 being duplicative. Further applicants proposed amendment of claim 9 would introduce a new 112 second paragraph issue, specifically, applicants intent in claiming a fusion protein comprising a portion of the protein of claim 92, which as has been previously stated reads on a single amino acid, and "another protein sequence", which also reads on a single amino acid..

Continuation of 5. does NOT place the application in condition for allowance because: all of the rejections of record remain based on the nonentry of applicants amendment.. In response to applicants argument, regarding the current 102 rejection, applicants are reminded that the rejected claims are NOT directed to "a protein having a particular, novel amino acid sequence" but rather the rejected claims are directed to "a fusion protein comprising a portion of a protein (TFIIA alpha/beta like factor) and a non TFIIA like factor. And as previously stated a "portion of a protein", whatever it may be, is anticipated by a single amino acid.